IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5109 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAHESH H PATEL

Versus

CHIEF OFFICER, CHANDKDHEDA NAGAR PALIKA

Appearance:

1. Criminal Misc.Application No. 5109 of 1998

MR BG JANI for Petitioner No. 1

..... for Respondent No. 1

MR AJ DESAI, ALDDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/04/2002

ORAL JUDGEMENT

#. This is an application under Section 482 of the

Criminal Procedure Code, 1973 for quashing and setting aside the FIR being CR No. I-169/1998 filed before Police Sub-Inspector, Chandkheda for the offence punishable under Section 188 of the I.P.C.

#. The original informant, the Chief Officer, Chandkheda, has filed the aforesaid FIR stating that the petitioner herein started construction of a house without any permission. That, thereafter there was a stay order dated 22.4.1998 preventing the petitioner from raising construction there. That despite the stay order, the petitioner continued construction of the said house and committed the said offence.

#. The petitioner herein has preferred this application to quash the said FIR on certain grounds. Rule was issued at the first instance. However, despite the service of rule, respondent no. 1, the Chief Officer of the said Nagarpalika has not opted to appear before the Court. On the other hand, Mr. A.J. Desai, learned APP has appeared for respondent no. 2.

#. I have heard the learned advocate for the petitioner as well as learned APP for the State.

#. There is no dispute that the aforesaid FIR has been filed for an offence punishable under Section 188 of the I.P.C. by the said Chief Officer of the Chandkheda Nagarpalika against the present petitioner. It would be necessary to read the provision made under Section 195 of the Criminal Procedure Code, 1973, which may be reproduced for ready reference as follows.

Sec.195:- Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-- (1) No Court shall take cognizance -

(a)(i) of an offence punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant

to whom he is administratively subordinate;

#. On bear reading of Section 195 of the said Code it becomes crystal clear that the Court cannot take cognizance of an offence punishable under Section 188 of the I.P.C. except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

#. Therefore, in the present case the complaint could be filed by the Chief Officer or by some other public servant to whom the Chief Officer is administratively subordinate. However, instead of filing a complaint, the contesting respondent has preferred to file FIR.

#. It would be necessary to refer the provision made in Section 2(d) which defines the term complaint as follows.

Sec. 2(d): "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

This means that a complaint can be termed as complaint provided it is filed before a Magistrate. Here the first information filed before the Police Station cannot be termed as complaint within the meaning of Section 2(d) of the said Code. When there is no complaint there is no question of investigation in the matter and, therefore, the Chief Officer could not have filed FIR. It was open to him to file a complaint before the learned Magistrate concerned, which has not been done by him. The FIR filed by him cannot be said to be competent under Section 195 read with Section 2(d) of the said Code. In that view of the matter the FIR is required to be quashed.

#. For the foregoing reasons, this application is allowed. The FIR being CR No. I-169/1998 filed by the Chief Officer, Chandkheda is ordered to be quashed. Rule is made absolute to the above extent.

[D.P. BUCH, J.]

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kks/-